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March 9, 2012

To: Senator Steve Cassano, Co-Chairman  
Representative Linda M. Gentile, Co-Chairman, and  
Members of the Planning and Development Committee

From: Wayne Cobleigh, Connecticut State Director,  
International Council of Shopping Centers (ICSC)

Subject: Senate Bill No. 343 An Act Concerning Intervention in Permit  
Proceedings Pursuant to the Environmental Protection Act of 1971

The ICSC was founded in 1957 as a professional trade association for the shopping center industry. We have nearly 600 members in Connecticut and almost 60,000 members in about 90 countries. ICSC members include shopping center owners, developers, managers, marketing specialists, investors, retailers and brokers, engineers, architects, contractors, academics, students, public officials and environmental/geotechnical engineering firms like my employer, GZA GeoEnvironmental, Inc. (GZA) with three offices and 60 employees in Connecticut. ICSC members are interested in land use permitting with: (1) a level playing field, (2) transparency, (3) certainty in what constitutes a complete application, and (4) sound governance. Permits without excessive delay are necessary to attract tenants and investment; and to design, construct, expand and renovate retail centers throughout the 169 municipalities in Connecticut.

My experience with statute 22a-19 is extensive and my perspective for requesting your full support in advancing SB 343 is unique. I am in my third year as a volunteer State Director for ICSC in Connecticut. I work for an environmental consultant firm that would benefit financially if environmental interventions without legitimate claims and evidence of unreasonable pollution were allowed to continue without the advancement of this bill. This is because interventions require an environmental consultant to opine and address the intervenor's concerns about unreasonable pollution of the environment, even when claims are not based in fact, sound science or substantial evidence. In 2000, I was the President of the North Simsbury Coalition, Inc., which was a volunteer-based 503 (c) 1 corporation of residents of Simsbury who provided substantial evidence to challenge the development in Simsbury of former tobacco fields and forest as the Meadowood residential development of 363 acres, one of the largest land use litigation cases in Connecticut.

Although the North Simsbury Coalition, Inc. produced volumes of evidence regarding our concern for pollution by mixing pesticides into the soils as a

“Responsible Environmental Intervention,” the State Supreme Court decided in favor of the developer, River Bend Associates, Inc. Although the Coalition lost our case, and the Town of Simsbury settled the matter, due to the changes in market economics by the time of the court decision, no homes have been built to date. It is my personal opinion that even if the legislature accepted the reforms in SB 343 in 1999, including the provision for paying damages for claims made not made in good faith or for purpose of delay, our intervention petition would still have gone forward, and we would not be paying the developer any damages. This opinion is based upon our Coalition organization, our attorney and retained experts being well qualified to understand the environmental science and regulatory requirements for the pollution at issue.

Abuse of the land use permit process is not limited to interested citizens. The Wall Street Journal article author, Ann Zimmerman, made front page news on June 7, 2010 exposing the Saint Consulting Group as being funded by rival supermarket chains, even posing as citizen groups to stop rival chains from obtaining permits. Zimmerman reviewed hundreds of pages of Saint documents and reported that Saint Consulting Group conducted about 1500 campaigns in 44 states, of which the owner Michael P. Saint indicated about 500 have involved trying to “block a development” and most of those have been clandestine.” Clearly secretly funded interventions are good business for The Saint Group but not for their opponents. Off the record lawyers have acknowledged to me or not denied that this practice happens in Connecticut. ICSC supports transparency for the environmental intervenor of funding sources that will help make such clandestine funders accountable when they fund an intervention as a method to delay or reduce market competition. We support item 2.C. of S.B. 343 to make secret funding more transparent.

Abuse of 22a-19 as a threat to the economic development and job creation is even more damaging to our economy going forward as we address the high unemployment Connecticut has been experiencing since late 2008. Statistics may indicate very few interventions reach the courts as a percentage of land use permits, but many developers or tenants lose interests in properties when interventions are proposed. Many developers do not make it to the permit application; they end the project to find another opportunity, because delays are too costly for most projects to sustain.

As someone in the environmental consulting business in Connecticut since 1982, the volume of local, state and federal environmental statutes, laws, ordinances, guidelines and court decisions has increased incredibly over my career. Legal and environmental professionals now need to specialize because the environmental and land use regulations are so voluminous. Connecticut DEEP is focusing on transformation and Lean management methods now because our State needs to change outdated and ineffective regulations that stifle responsible growth of our economy. We are not regulating in 1971 anymore. We strongly support reform of 22a-19 and transparent and responsible environmental interventions that meet the governance expected in the 21st century.

There is a motto from Peter H. Diamandis author of “Abundance, The Future is Better Than You Think” for balancing our economic and environmental solutions: “The best way to predict the future is to create it yourself.” This is an opportunity to create a better economic future and protect the environment by moving S.B. 343 forward. Thank you for considering my comments.